

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WP(C).No. 18417 of 2007(P)

AGAINST THE ORDER IN E.P.NO.1804/2004 IN
OS.730/2003 OF MUNSIFF COURT, TIRUR.

PETITIONER:

SOUMYA KURIES & LOAN PRIVATE LTD., REGD.
OFFICE AT MANGALODAYAM BUILDING, ROUND SOUTH,
TRICHUR VILLAGE, DESOM, TALUK, REP.BY ITS MANAGING DIRECTOR,
DAVY V.THATTIL, AGED 55 YEARS,
S/O.THATTIL PIDIYATH VARGHESE, NOW RESIDING AT
CHELAKOTTUKARA DESOM, OLLUR VILLAGE, TRICHUR TALUK.

BY ADV. SRI.V.R.KESAVA KAIMAL,
SRI.N.M.MADHU.

RESPONDENTS:

1. C.R.BHARGAVI, AGED 55 YEARS,
W/O.ALOTH KESAVAN, PANAMUCK DESOM,
KANIMANGALAM VILLAGE, TRICHUR TALUK.
2. A.K.RAJESH, AGED 35 YEARS,
S/O.ALOTH KESAVAN -DO-
3. T.G.SAROJINI, AGED 73 YEARS,
D/O.THAYYIL GOVINDAN, -DO-
4. A.K.RAMESH, AGED ABOUT 37 YEARS,
S/O.ALOTH KESAVAN -DO-
5. A.K.OUSEPUNNI, AGED 51 YEARS,
S/O.AKKARA KUNJUVARU, AVANOR VILLAGE,
DESOM, TRICHUR TALUK.

W.P.(C). NO.18417/2007:

**6. SOLIDARITY KURIES INDIA LIMITED
RICE BAZAR, TRICHUR 680 001
REP.BY THE CHAIRMAN K.P.FRANCIS.**

**BY ADV. SRI.P.V.SREENIVASAN,
SRI.K.A.SREEJITH.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30/07/2007,THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C). NO.18417/2007:

APPENDIX

RESPONDENT'S EXHIBITS:

EXT.P.1: COPY OF THE E.A. 1401/05 IN E.P. 1804/04 IN O.S. 730/03 DTD. 29/06/2005.

EXT.P.2: COPY OF THE COUNTER DTD. 29/09/06 FILED BY THE R.6 IN E.A. 1401/05 IN E.P. 1804/04 IN O.S. 730/03.

EXT.P.3: COPY OF THE ORDER DTD. 03/11/2006 IN E.A. 1401/05 IN E.P. 1804/04 IN O.S. 730/03.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

M.N.KRISHNAN, J

=====

W.P.(C) No.18417 OF 2007

=====

Dated this the 30th day of July, 2007

JUDGMENT

This writ petition is filed to set aside the order in E.A.No.1401 of 2005 in E.P.No.1804 of 2004 in O.S.No.730 of 2003. The said petition is filed for impleadment of the person who had purchased the property in a court auction in execution of the decree in O.S.No.37 of 2003. The case of the applicant is to the effect that there was a mortgage of the property with him and it wants to enforce the mortgaged decree and at that stage, it came to know that there had already been attachment and sale of the property and therefore it wants the person who purchased the property in the party array. It is settled principle that the mortgage runs with the property and when a person claims right under a mortgage it is certain that he is entitled to be heard. Similarly, a person who is in possession of the property by virtue of a court sale also should be heard before finally disposing of the matter. So impleadment of the party is necessary for resolving the dispute between the parties. Meanwhile respondents 1 to 5 are eager enough to discharge the decree debt.

Therefore the order under challenge is set aside and E.A.No.1401 of 2005 is allowed and permission is granted to implead 6th respondent as an additional respondent in the execution petition. The court below shall give a reasonable time for respondents 1 to 5 to wipe off the entire liability to the decree holder so that so many other complications can be averted. If it is not settled in that way then the court is directed to proceed and adjudicate the matter in accordance with law.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-